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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/630,119

07/30/2003

Gregory D. Sunvold

IAM 0630 IA

7162

7590 06/13/2007
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EXAMINER

YOUNG, MICAH PAUL

ART UNIT

PAPER NUMBER

1618

MAIL DATE

DELIVERY MODE

06/13/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/630,119	Applicant(s) SUNVOLD, GREGORY D.	
	Examiner Micah-Paul Young	Art Unit 1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Acknowledgement of Papers Received: Response dated 3/21/07.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combined disclosures of Sunvold et al (USPN 6,180,131 hereafter '131) in view of Brown et al (USPN 5,894,029 hereafter '029). The claims are drawn to a process for limiting weight gain in a cat comprising the feeding of said cat a specific formulation comprising a protein source, fat, and a carbohydrate from a grain source other than rice.

4. The '131 patent teaches a method of feeding pets such as cats a diet comprising a food composition comprising a source of protein, a source of fat and a carbohydrate grain source (abstract, Table 1). The pet food promotes satiety since it is filling, thereby promoting a voluntary decrease in food intake (abstract). The carbohydrate source includes corn grits, the

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protein source includes chicken and the fat includes chicken fat (Table 3). The composition comprises 23.4% of a protein source (chicken), 4.2% of a fat component, and 3.6-4.2% of a fiber carbohydrate source, and a remaining percentage of corn grits (Table 3). It would have been inherent that the cat population would include males thus food would be provided and consumed following the method of the '131 patent.

1. The combination is silent to the inclusion of sorghum or barley yet the reference suggests the inclusion of oats. The inclusion of grain mixtures and blends into pet foods is well within the level of skill in the art as seen by the '029 patent.

2. The '029 patent discloses a pet snack food comprising spices, protein materials and carbohydrate blends (abstract). The carbohydrates include corn, oats, sorghum, and barley (col. 2, lin. 34-52). It would have been well within the level of skill in the art to include these combinations in to the food product of the '131 in order to provide an improved nutritional source of stability material.

3. Regarding the claims reciting specific ratios and percentages it is the position of the Examiner that such limitations do not impart patentability on the claims. The prior art discloses a method of feeding a cat a feed composition comprising a protein source, a fat source and a carbohydrate grain blend source. The composition of the '131 patent promotes satiety and would inherently treat postprandial conditions since it comprises each of the elements of the instant claims. The '029 patent discloses a high ratio of corn meal to sorghum (col. 5, lin. 39-45). Where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. *See In re Aller*, 220 F.2d 454 105 USPQ 233, 235 (CCPA 1955).

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4. Furthermore the claims differ from the reference by reciting various concentrations of the active ingredient(s). However, the preparation of various compositions having various amounts of the active is within the level of skill of one having ordinary skill in the art at the time of the invention. It has also been held that the mere selection of proportions and ranges is not patentable absent a showing of criticality. *See In re Russell*, 439 F.2d 1228 169 USPQ 426 (CCPA 1971).

5. Regarding the sex of the cat, it is the position of the Examiner that the sex of the cat does not impart patentability on the claims. The prior art discloses the same process providing the same composition to the same species of animal. Burden is shifted to applicant to provide any significance to the sex of the animal since both methods provide the same results, namely satiety and improved glucose metabolism.

6. With these things in mind it is the position of the Examiner that it would be obvious to combine the grain blend of the '029 patent into the feeding method of the '131 in order to improve the stability and nutritional value of the method. It would have been obvious to combine the teachings and suggestions with an expected result of a method of feeding resulting in healthier pets.

Response to Arguments

7. Applicant's arguments with respect to claims 1-32 have been considered but are moot in view of the new ground(s) of rejection. It remains the position of the Examiner the combination of the Sunvold and Brown obviates the claims. The Sunvold provides a combination of protein, fat, and carbohydrate sources for pet cats. The Brown reference provides the specific grain

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source combinations. The Brown reference is silent to the specific ratios of the instant claims yet discloses similar ratios of large amounts of corn to smaller amounts of other grain sources such as barley, wheat and sorghum. For these reasons the claims remain obviated.

Correspondence

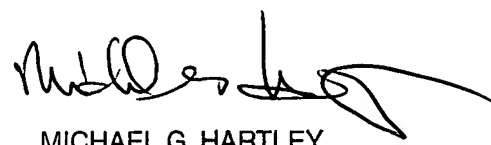
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Micah-Paul Young whose telephone number is 571-272-0608. The examiner can normally be reached on M-F 6:00-3:30 every other Monday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on 571-272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


MP Young

Micah-Paul Young
Examiner
Art Unit 1618


MICHAEL G. HARTLEY
SUPERVISORY PATENT EXAMINER